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IN THE

# Supreme Court of the United States

October Term, 1962

No. 140.

NATHAN WILLNER,

*Appellant,*

vs.

COMMITTEE ON CHARACTER AND FITNESS,  
APPELLATE DIVISION OF THE SUPREME  
COURT OF THE STATE OF NEW YORK, FIRST  
JUDICIAL DEPARTMENT.

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS  
OF THE STATE OF NEW YORK

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## APPELLANT'S REPLY BRIEF

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LESTER J. WALDMAN,  
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## APPELLANT'S REPLY BRIEF

Appellant's brief consists of six pages. Appellee's is a book of ninety pages. It presents an apt example of "me-thinks he doth protest too much".

Our petition for certiorari was based on two grounds—denial of confrontation by the two lawyers Wieder and Dempsey, which denied due process, in violation of his constitutional rights under the Fifth and Fourteenth Amendments of the United States Constitution and on the ground, that the denial of admission was "arbitrary" in violation of the announced policy of the Court that a state may not arbitrarily deny one permission to practice law.

At the age of 36, Willner applied for admission to the Bar, more than a quarter of a century ago and he has been

fighting for it ever since. One may well wonder why one holding a bachelor's degree in Commercial Science, a license as a certified public accountant, a Master of Law degree, passed the Bar examination and had taught accounting and business law in three colleges, Iona in New Rochelle, N. Y., St. Francis in Brooklyn and New York University, lacks the character and fitness for admission to the Bar.

The majority of applicants for admission to the Bar are between 25 and 28 years of age. They had spent their college and law school years in school dormitories or at home, free of the necessity of entering the business world to engage in the rough and tumble of earning a living. Willner when he applied for admission was 36 years of age. He was married and had two children, one suffering from asthma, which induced him to locate his family in Peekskill, N. Y. He had the burden of supporting his family and contributing to the support of his elderly parents. So, he practiced public accounting in Peekskill, and in the very nature of things, had disputes and quarrels, occasional law suits, made enemies; in other words, the usual incidents of a business life.

### **The Appellee's Book**

Pages 1 to 60 inclusive had one purpose—to create the impression that the denial of admission had some justification on the theory that every word was true.

The sixty pages should be disregarded as not a proper part of a brief.

### **Reply to Point I**

All of Willner's applications for admission to the Character Committee beginning with the first in 1937 were completely ignored by it; no appearance of any kind, treated with a silent contempt and its actions, invariably affirmed by the Appellate Division and the Court of Appeals, unanimously and without opinion.

On page 61, learned counsel, realizing that the unanimous affirmations without opinion require explanation, indulge in a series of surmises or rather guesses or "may haves" commencing with subdivision (1), page 60 and terminating on subdivision 11, page 63.

The readings of the minds of seven judges, affords good mental exercise, and that is all.

### Reply to Points II and III

We agree that good moral character is a proper prerequisite for admission to the Bar. But we urge that an issue which affects the life career of a person, should be tried like any issue of fact in a law suit, by appearance and confrontation of parties, and witnesses in accordance with common law rules of evidence and procedure.

Confrontation of witnesses is made mandatory only once in the Constitution—the 6th Amendment, which applies solely to trial of criminal cases. The protection of one in his life's career is entitled to as great consideration as that of the criminal.

The right to confront one's accusers has been fought for thousands of years. Plato relates that in ancient Greece, Socrates was condemned for subversion in such manner. At his trial he said:

"And hardest of all, I do not know and cannot tell the names of my accusers. All who from envy and malice have persuaded you—some of them having first convinced themselves—all this class of men are difficult to deal with, for I cannot have them up here and *cross-examine them* and therefore I must simply fight and argue when there is no one to answer."

(italics added)

The members of the Character Committee assigned to pass on Willner's fitness had tremendous power. Their "no", rubber stamped by their seven colleagues, as a matter of course, was unanimously approved by the courts, and always without opinion and always without appearance by the Committee. No reason for the rejection stated—not even a three word sentence. Why the silence? Apparently on the theory that Bar membership is a privilege, which the state as Sovereign may grant or refuse at its whim or pleasure, an anachronism in the true sense of the word.

### Conclusion

On the record before it, Willner was entitled to admission when he first applied, more than twenty-five years ago. He is entitled to admission now and without delay.

The order appealed from should be reversed, and the proceeding remitted to the Court of Appeals, with the direction that Willner be admitted to the Bar forthwith.

Respectfully submitted,

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